FRONT Report LINE

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Sex offender bill now law

LEGISLATIVE UPDATE

The governor has signed into law a bill that increases the punishment for some sex offenders, keeps offenders away from schools and toughens registry requirements.

Among the provisions of House Bill 1698, which took effect June 5:

- Increases the punishment for forcible rape or forcible sodomy when the victim is younger than 12 — the new penalty is a minimum of 30 years or at least 15 years if the defendant is now 75 or older.
- Removes the possibility of an SIS for a person convicted of forcible rape or forcible sodomy.
- Prohibits certain sex offenders from school facilities unless they are a parent or guardian of a student — even then they must obtain approval from the superintendent or school board to attend certain school functions.
- Creates the crime of aiding a sexual

SEE **SEXUAL OFFENDER,** Page 2

Filing still open for body armor claims

Law enforcement agencies still can file claims for flawed body armor containing Zylon

Attorney General Jay Nixon in May urged law enforcement agencies to examine their inventories of body armor after tests found flaws in certain models that make them vulnerable to penetration from firearms.

The U.S. Department of Justice's National Institute of Justice performed extensive tests on body armor containing Zylon fibers and concluded that the armor failed to provide adequate protection to stop a bullet, particularly when the armor is exposed

SEE **BODY ARMOR,** Page 2

Conduct proper field sobriety tests

York v. Director of Revenue
SC87159
March 21, 2006

In an administrative revocation case, the Missouri Supreme Court concluded that probable cause to arrest a drunken driver could be lacking if the officer fails to follow the proper procedures in conducting field sobriety tests.

In *York v. Director of Revenue*, a trial court disregarded and discounted an arresting officer's opinion that Ryan York was intoxicated because the officer did not properly conduct field sobriety tests.

The National Highway Traffic and

SEE **SOBRIETY TEST,** Page 2

Nixon, agencies' investigation results in ID theft charges

Norma Black

Jason Waln

Two Springfield residents are facing criminal charges that they used the stolen identity of an acquaintance to make numerous withdrawals totaling over $3,000 from the alleged victim's bank account.

The charges of identity theft filed by Greene County Prosecutor Darrell Moore against Norma Black and Jason Waln come after an investigation by Moore's office, the office of Attorney General Jay Nixon and the Springfield Police Department. Nixon's office was appointed to assist with the case.

This is the fourth ID theft case in the last four months that Nixon's office is helping to prosecute. The other cases are in Jefferson and Polk counties.

"We will continue to work with local prosecutors to share our expertise in identity theft cases. We are helping to prosecute several cases where the Internet was used to steal information."

~ Attorney General Nixon

BODY ARMOR: CONTINUED FROM PAGE 1

to heat or moisture. Last August, the NIJ decertified all vests containing Zylon.

"Body armor has become a vital tool for law enforcement and has been responsible for saving many lives," Nixon said. "Unfortunately, body armor containing Zylon can be flawed, and I urge agencies to replace those vests as soon as possible to protect their officers."

Nixon sent a letter to law enforcement agencies to inform them about the manufacturers affected by the problems with Zylon and about several class action lawsuit settlements. Several vest makers have agreed to replace the vests or compensate owners.

Agencies can find out more about the settlements at www.ago.mo.gov. The manufacturers are:

- A settlement reached with Gator Hawk Armor allows owners to receive free non-Zylon replacement ballistic panels or vouchers. Claims must be submitted by **Aug. 5**.
- A settlement with Point Blank Body Armor and Protective Apparel Corp. of America allows owners to get free non-Zylon ballistic panels or vouchers. The deadline to file a claim is **Aug. 31**.
- A settlement was obtained last year against Toyobo, the Japanese manufacturer of Zylon. The lawsuit involved vests made by Second Chance Body Armor. Some money remained available in May, but the deadline to file claims was **July 1**.

SEX OFFENDER:

CONTINUED FROM PAGE 1

offender if a person helps the offender elude law enforcement when that offender is required to register.

- Makes substantial changes to the sex offender registry law, including changes as to whom must register, how certain offenders can petition to get off the registry, additional offender information to be included in the registry, and enhanced penalties for failure to register.
- Sets up a grant program for law enforcement agencies to improve investigations into Internet sex crimes against children and creates a panel to help administer the grants.

SOBRIETY TEST: CONTINUED FROM PAGE 1

Safety Administration has concluded that the three most accurate and reliable field sobriety tests are horizontal gaze nystagmus, walk and turn, and the one-leg stand. These and other traditional tests are universally taught throughout Missouri.

NHTSA provides a training manual on how to administer the tests. Most students at Missouri police training academies are taught the proper techniques, although they rarely view the manual.

In *York*, the officer was deposed about her arrest and questioned extensively by the defense attorney about manual procedures. The officer admitted she was unfamiliar with the manual and conceded she did not follow manual procedures.

She then made one more crucial concession, agreeing that her testing was "invalid" because she had not followed manual guidelines. Such a concession is not necessarily true.

While the manual does say failure to follow guidelines may bring into question the accuracy of the tests, it is not necessarily the case. For example, variations in the distance one holds the stimulus to conduct HGN testing has repeatedly been shown to have little impact on the accuracy of the results.

Nevertheless, since the officer conceded that her test results were invalid, the trial court was free to conclude that she lacked probable cause to make an arrest based on "invalid" field sobriety tests.

This is a challenge that officers are likely to see more frequently.

Officers need to become familiar with the manual and realize that the manual is not the "DWI Bible." It is a useful tool, but it is not the ultimate authority on the validity of sobriety testing.

Of course, officers are encouraged to periodically review the NHTSA recommendations to make sure that the techniques they use to conduct sobriety tests comply with the national recommendations. Such a review can prevent future problems in court.

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UPDATE: CASE LAW

Opinions can be found at www.findlaw.com/casecode/index.html

MISSOURI SUPREME COURT

INEFFECTIVE COUNSEL

Dale Dobbins v. State

No. 86737, Mo. banc, April 11, 2006

Dale Dobbins entered open pleas of guilty to possession of more than 5 grams of marijuana with intent to distribute and driving with a suspended license.

In doing so, he relied on his attorney's advice that he would be eligible to petition for early release after completing a rehabilitation program.

He later was sentenced to 18 years in prison on the possession charge and six months for driving while suspended.

Dobbins then learned he was not eligible to petition for early release and filed a Rule 24.035 motion for postconviction relief alleging ineffective assistance of counsel.

On appeal, the Supreme Court determined that Dobbins should be allowed to withdraw his guilty pleas based on erroneous advice given to him by plea counsel.

Since Dobbins was a prior offender, he was not eligible to petition for early release. The mistaken advice given by his counsel affected Dobbins' ability to enter knowing and voluntary pleas.

PERSISTENT OFFENDER, SUFFICIENCY OF EVIDENCE

State v. Charles L. Sanchez

No. 87214, Mo. banc, March 21, 2006

Charles Sanchez was convicted of two counts of kidnapping, two counts of armed criminal action, unlawful use of a weapon and first-degree arson. He raised several issues on appeal. The court determined that:

It was not error to allow a witness to testify that Sanchez may have been using meth at the time of the crime. This evidence was admissible as part of the sequence of events surrounding the crime and rebutted Sanchez's inference that he was mentally ill.

The state's closing argument was not plainly erroneous. The argument rebutted several comments made by the defense counsel and had no decisive effect on the jury.

There was sufficient evidence to sustain his conviction for arson since Sanchez told a witness that he had started the fire, which could endanger nearby houses and people.

It was not improper to convict the defendant of multiple counts of kidnapping since there were multiple victims at issue.

CONCEALED WEAPONS PERMITS

David Nelson v. Dennis Crane

No. 87205, Mo. banc, April 11, 2006

David Nelson's application for a concealed weapons permit was denied because the Callaway County sheriff determined that Nelson once had been committed to a mental health facility.

On appeal, the Supreme Court determined that Nelson had not been committed to a mental health facility. Rather, he had been temporarily placed in a mental health facility under Section 632.305.3, which provides for 96-hour detentions for evaluation and treatment.

Since the terms commitment and detention have distinct meanings, the court assumes the legislature was aware of the meaning of these terms when enacting the concealed weapons statute.

EASTERN DISTRICT

SEARCH AND SEIZURE, SEARCHES INCIDENT TO ARREST

State v. Mecca Scott

No. 85772, Mo.App., E.D., April 18, 2006

Mecca Scott was pulled over for driving with a burned-out taillight. He told the officer he did not have a driver's license, and a computer check revealed that his license was suspended.

The officer arrested Scott and handcuffed and placed him in the patrol car.

The officer then searched Scott's vehicle, discovering a small amount of crack cocaine. Scott was taken to the police station.

The officer put the cocaine into a bag and placed it on a counter. Scott then grabbed the bag, ran into a restroom, and tried to flush it down the toilet. Scott later was convicted of attempted tampering with physical evidence.

On appeal, Scott claimed that the search of his vehicle was improper.

The court concluded, however, that the search was a proper search incident to arrest. It was proper even though Scott was secured in the patrol car during the search. Officer safety is still an issue even when a suspect is secured; thus searches incident to arrest in that situation are valid.

GUILTY PLEA, FACTUAL BASIS

Julius Martin v. State

No. 85959, Mo.App., E.D., March 28, 2006

Julius Martin pleaded guilty to first-degree robbery and armed criminal action. Thereafter, he filed a Rule 24.035 motion for postconviction relief claiming his pleas lacked a sufficient factual basis. The motion was denied.

On appeal, the court found that there was a sufficient factual basis for the guilty pleas because Martin admitted that he took a knife from the victim, took something else from the victim after that, and placed the knife near the victim's throat.

ID Theft Hotline
800-392-8222

Nixon has set up a hotline to help Missourians recognize and report identity theft. He also now has a complaint form online at **www.ago.mo.gov** for victims to report theft.

U.S. Supreme Court limits consent searches

Georgia v. Randolph
No. 04-1067
March 22, 2006

The U.S. Supreme Court has ruled that if a tenant objects to a search, even when a co-tenant has approved the search, then police cannot conduct a search.

Previous court decisions suggested that as long as an officer has the voluntary consent of someone with the apparent authority to give that consent, officers may conduct the search regardless of other objections. This is no longer true.

In *Georgia v. Randolph*, a couple were separated and having a custody dispute. The wife told police that her husband was abusing cocaine and there was evidence of drug use in the home.

With both spouses present, an officer asked the husband for consent to search. The husband refused. The officer then asked the wife, who consented. A search revealed evidence of cocaine use and the husband was prosecuted.

The Georgia Supreme Court suppressed the evidence, concluding that the officer did not have authority to search because of the husband's refusal of consent.

The U.S. Supreme Court affirmed that decision, making clear that this ruling was not limited to cases involving spouses. Two points must be emphasized:

- In any situation where two or more persons are living, the refusal of one tenant negates any consent by another tenant. This does not mean, however, that the officer must always seek permission from every tenant. If the other tenant is gone – or is merely silent – the voluntary consent of one tenant or resident continues to be a sufficient basis for a valid consent search.
- This case does not limit the authority – or responsibility – of officers investigating domestic violence complaints from entering a residence, if necessary, to determine if someone is being victimized or has been a victim.

The court stated: "No question ... could be [raised] about the authority of the police to enter a dwelling to protect a resident from domestic violence." This is true "however much a spouse or other co-tenant objected." Under these circumstances, the search is not based on consent but because "exigent circumstances" justify the entry to discover, or protect, a victim of domestic abuse.

UPDATE: CASE LAW

WESTERN DISTRICT

AFFIRMATIVE DEFENSE, NOT GUILTY BY REASON OF MENTAL DISEASE

State v. James M. Lewis
No. 64378, Mo.App., W.D., April 18, 2006

James Lewis argued with the victim and stabbed him. Lewis claimed the victim had been entering his apartment and messing with his belongings. Lewis was charged with first-degree assault and armed criminal action.

At trial, Lewis introduced evidence that he was suffering from a mental disease or defect that negated any culpable mental state. The trial court determined that Lewis was not guilty by reason of mental disease or defect excluding responsibility and ordered him committed to a state mental hospital.

On appeal, Lewis claimed that the trial court erred by finding him not guilty by reason of mental disease or defect since he had not asserted this defense by entering such a plea or filing a timely notice of his intent to rely on such defense.

The court agreed, finding that not guilty by reason of mental disease or defect is an affirmative defense that must be initiated and proven by a defendant. Neither the state nor a trial court can assert this defense on behalf of a defendant.

Lewis introduced evidence of his mental disease or defect only to show that he could not form the requisite culpable mental state required for conviction.

INSTRUCTIONAL ERROR

State v. Larry C. Hashman
No. 64821, Mo.App., W.D., April 4, 2006

Larry Hashman was convicted of first-degree assault and armed criminal action.

He appealed, claiming that the trial court erred in failing to instruct the jury on defense of premises and denying his request for a mistrial when the state misstated the burden of proof.

On appeal, the court found that the trial court did not err in refusing to instruct the jury on defense of premises. The evidence at trial established that the victim was initially inside Hashman's house at his request.

Hashman also allowed the victim into the house a second time. Once inside the house, the victim no longer presented a danger of unlawful but rather of imminent bodily harm to Hashman. Thus, the appropriate instruction was one for self-defense that was given to the jury.

The court also found that it was not error to refuse a mistrial. The state did not misstate the burden of proof, but rather informed jurors that Hashman was a liar and that they did not have to believe his claims.

UPDATE: CASE LAW

WESTERN DISTRICT

SEARCH AND SEIZURE, INVENTORY SEARCHES

State v. Gary M. Jackson

No. 65321, Mo.App., W.D., March 28, 2006

Gary Jackson was stopped for failing to signal a turn and not displaying a valid license plate. He also could not produce proof of insurance.

The officer, who was granted permission to search Jackson's truck, discovered a rifle.

Thereafter, the officer was informed that Jackson was on probation for felony assault. The officer then arrested Jackson for being a felon in possession of a firearm as well as for failing to signal a turn and failure to produce proof of insurance.

Jackson was searched at the jail. A container with meth was found in his pocket. A subsequent search also revealed marijuana in his shirt pocket. Jackson later was convicted of possession of meth and marijuana in a county jail.

On appeal, Jackson claimed that evidence of the controlled substances found should have been suppressed as the fruits of an illegal search.

The court disagreed, finding that it was proper to arrest Jackson for the observed traffic violations. Therefore, the searches of his person and property were valid as inventory searches.

SENTENCING ENHANCEMENT, PROOF OF PRIORS

State v. Bradley E. St. John

No. 64890, Mo.App. W.D., March 28, 2006

Bradley St. John was convicted of first-degree domestic assault. He was sentenced as a prior and persistent domestic violence offender based on previous Illinois convictions.

On appeal, St. John claimed that the trial court erred in sentencing him as a prior and persistent domestic violence offender since his previous convictions did not meet the statutory definition of "domestic assault offenses." He also claimed that the trial court erred in overruling his motion to strike a venireperson.

The court found that the trial court did err in sentencing him as a prior and persistent domestic violence offender because the statutory definition states that only convictions under 565.050, 565.060, 565.072, and 565.073, RSMo, qualify as "domestic violence offenses."

Since St. John's prior convictions occurred in Illinois, they could not be used to enhance his sentence.

The court also found that the trial court did not err in overruling St. John's motion to strike a venireperson because the venireperson indicated she could follow the law and be a fair and impartial juror.

DNA, POSTCONVICTION TESTING

Greggory Hudson v. State

No. 64725, Mo.App., W.D., March 28, 2006

Greggory Hudson was convicted of first-degree murder and armed criminal action in 1996. Thereafter, Hudson filed a motion pursuant to 547.035 to have DNA testing done on evidence involving another person.

Hudson characterized the individual as an alternative perpetrator and sought to have his DNA compared to DNA found on a cigarette butt found at the scene of the crimes for which he was convicted.

It was established at the 1996 trial that the DNA found on the cigarette butt did not match either the victim's or Hudson's DNA. This motion was denied.

On appeal, Hudson claimed that the motion was erroneously denied because he was not required to show that the evidence he sought to have tested was "secured in relation to the crime." He also claimed that he was not required to show that if exculpatory results had been obtained from the requested testing a reasonable probability existed that he would not have been convicted.

The court found that Section 547.035 does require that the evidence sought to be tested was secured in relation to the crime. Section 547.035 does not create a procedure for testing newly discovered evidence.

The court also found that because evidence had been introduced at Hudson's trial indicating that the DNA found on the cigarette butt did not match the defendant, the result of the trial would not have been different even if the DNA were found to belong to the potential alternative perpetrator.

POSTCONVICTION MOTIONS

Vernon Norfolk v. State

No. 64831, Mo.App., W.D., April 4, 2006

Vernon Norfolk pleaded guilty in 1996 to one charge of knowingly burning. He was sentenced to five years in prison; execution of the sentence was suspended and he was placed on probation for five years.

In January 2000, his probation was revoked for failing to pay restitution and the court imposed a new five-year term of probation. In August 2002, the court ordered the early termination of his probation after finding that he had fully paid his court costs and restitution.

Three weeks later, the court rescinded this order based on information that Norfolk had made fraudulent representations about the payment of restitution and reinstated his probation.

The court then revoked the probation and ordered execution of his prison sentence. Norfolk filed a Rule 24.035 motion for postconviction relief claiming that the trial court lacked jurisdiction to reinstate and revoke his probation and execute the prison sentence.

On appeal, the court agreed that the trial court lost jurisdiction when it discharged Norfolk from probation. Thus, the trial court had no authority to reinstate the probation or execute the prison sentence.

UPDATE: CASE LAW

SOUTHERN DISTRICT

INEFFECTIVE COUNSEL

James Fortner v. State
No. 26832, Mo.App., S.D., March 28, 2006

James Fortner was convicted of first-degree sodomy. He filed a Rule 29.15 motion for postconviction relief, claiming he received ineffective assistance of counsel because his trial counsel failed to call his nephew as a witness. The motion was denied.

On appeal, the court found that Fortner's counsel had interviewed the nephew and determined his testimony would be inconsistent with Fortner's expectations and would, in part, substantiate the testimony of the complaining witness.

Thus, it was a sound exercise of trial strategy not to call the nephew as a witness.

INSTRUCTIONS, LESSER OFFENSES

State v. Charles R. Eoff Jr.
No. 26047, Mo.App., S.D., April 13, 2006

Charles Eoff Jr. was charged with first-degree robbery, second-degree assault and armed criminal action. A jury found Eoff guilty on all counts.

On appeal, Eoff claimed the trial court erred in failing to instruct the jury on the lesser included offenses of second-degree robbery and third-degree assault and in failing to suppress the victim's out-of-court identification of him.

The court disagreed, finding that since Eoff used a large stick to hit the victim more than one time there was no basis on which the jury could have acquitted him of the greater offenses and convicted him of the lesser. When used to bludgeon a victim, a stick clearly qualifies as a dangerous instrument.

It also was proper to admit the victim's out-of-court identification since the circumstances of the identification were not overly suggestive and the victim had the chance to observe Eoff for five to 10 minutes only five hours prior to the identification.

DNA, POSTCONVICTION TESTING

State v. Wesley Eugene Fields
No. 27057, Mo.App., S.D., March 29, 2006

Wesley Eugene Fields was convicted in 1973 of capital murder. He later filed a motion for DNA testing pursuant to 547.035. It was denied.

On appeal, the court agreed that Fields was not entitled to DNA testing since he could not prove that identity was an issue in the trial on his murder conviction. Fields never contested that he was the person responsible for shooting the victim. He also failed to allege how testing would exonerate him.

INSTRUCTIONAL ERROR

State v. Phillip C. Bristow
No. 26825, Mo.App., S.D., March 31, 2006

Phillip Bristow was convicted of first-degree assault and armed criminal action. He appealed, claiming that the trial court gave an improper instruction advising the jury that voluntary intoxication was no defense to the charged crimes.

Bristow claimed that this instruction lacked evidentiary support, confused and misled the jury, and prevented the jury from considering his claim of self-defense.

On appeal, the court agreed that the instruction was improperly given, holding that there must be some evidence of impairment before a jury may be instructed on voluntary intoxication. There was no evidence that Bristow was intoxicated.

The court also found that Bristow was prejudiced by the giving of this instruction because it led the jury to believe that he was attempting to escape liability based on intoxication, thereby implicitly admitting some wrongdoing and that he was intoxicated, which would negatively affect his credibility. Thus, the convictions were reversed.

EVIDENCE OF OTHER CRIMES

State v. Richard Oplinger
No. 27036, Mo.App., S.D., March 31, 2006

Richard Oplinger was convicted of first-degree robbery and armed criminal action. He appealed, claiming that the trial court erred in allowing the state to cross-examine him about his use of meth the night before the robbery. Oplinger claimed this evidence was irrelevant and prejudicial.

On appeal, the court found that evidence of Oplinger's drug use the night before the crime was relevant and subject to cross-examination since it impacted his credibility and ability to perceive and recollect the events about which he was testifying.

JUROR, NONDISCLOSURE

State v. Patrick L. Edmonds
No. 26554, Mo.App., S.D., March 15, 2006

Patrick Edmonds was convicted of forcible rape, forcible sodomy and incest with his daughter. He appealed, challenging the selection of a juror on the basis of nondisclosure, the admission of testimony that he had refused to answer a particular question, and the admission of testimony that he had never apologized to his daughter.

On appeal, the court found that there was no intentional nondisclosure by the juror since there was no specific question that the juror failed to answer. Thus, there was no factual basis for Edmonds' claim of nondisclosure.

The court also found that testimony concerning Edmonds' refusal to answer a particular question was properly admitted since Edmonds was not in custody at the time he refused to answer the question.

The court also held that it was not plain error to admit evidence that Edmonds had not apologized to his daughter because the question was ambiguous and did not result in prejudice to Edmonds.

Civil liability for malicious prosecutions limited

Hartman v. Moore
No. 04-1495
April 26, 2006

The U.S. Supreme Court has ruled that police officers cannot be sued for malicious prosecution unless the plaintiff can prove no probable cause existed.

While this at first may seem like a well-established principle, the court's decision does give additional protection to officers accused of acting in bad faith when arresting and prosecuting a suspect.

In *Hartman v. Moore*, William G. Moore Jr. sued federal postal inspectors and a prosecutor following his acquittal of charges alleging he was involved in kickbacks.

Moore claimed he was prosecuted in retaliation for criticizing the postal service and he was the victim of malicious prosecution.

The basic premise of retaliation claims is that "but for" some protected activity – such as free speech or whistle-blowing – the public officials would not have taken any action against the plaintiff.

In criminal cases, there is a long-standing presumption that the prosecutor who files criminal charges is acting independently and using his own judgment to decide that a crime was committed. To prove that an officer overcame the independent judgment of the prosecutor and caused the criminal charges to be improperly charged, the plaintiff must establish there was no probable cause to have brought the cases in the first place.

Simply because a suspect is acquitted of the criminal charges does not mean the officers acted improperly or in violation of the Constitution in bringing the charges.

Arrests and prosecutions are based on the existence of probable cause and as long as probable cause existed, liability will not arise simply because an individual is later acquitted.

UPDATE: CASE LAW

SOUTHERN DISTRICT

POSSESSION, SUFFICIENT EVIDENCE

State v. Annalea R. Bremenkamp
No. 26975, Mo.App., S.D., April 10, 2006

Annalea Bremenkamp was convicted of possession of meth with intent to distribute and possession of pseudoephedrine with intent to manufacture meth.

She appealed, claiming the trial court erred in admitting an inculpatory statement she made during execution of the search warrant and challenging the sufficiency of the evidence.

On appeal, the court found that it was not error to admit Bremenkamp's inculpatory statements because although she had been Mirandized and refused to speak to officers upon execution of the search warrant, she had been released from custody for about one month before she made the statements at issue. Moreover, she had again been advised of her Miranda rights prior to making the statements.

The court also found that there was sufficient evidence to sustain her convictions. She had routine access to areas where meth was being made, she was in close proximity to drugs and drug paraphernalia in plain view of the police, and made inculpatory statements.

APPEAL, WAIVER OF RIGHT

State v. John H. Green
No. 26967, Mo.App., S.D., April 21, 2006

John Green was convicted of possession of marijuana with intent to distribute. Since he was a prior and persistent offender, he faced punishment of 10 to 30 years in prison.

Before his sentencing, the parties appeared before the trial court and announced that Green had agreed to waive his rights to appeal and to seek postconviction relief in exchange for the state's recommendation that he be sentenced to 10 years.

At the final sentencing hearing, Green waived his appeal and postconviction rights, the state recommended he be sentenced to 10 years, and the trial court sentenced him accordingly.

Despite the waiver of his right to appeal, Green appealed, claiming that the evidence was insufficient to support his convictions. The court found that Green had validly waived his rights to appeal and had been sentenced in accordance with the agreement reached. The court determined that his voluntary waiver precluded any review of the merits of his appeal, and the appeal was dismissed.

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Officers' entry into home to stop a fight is lawful

Brigham City, Utah v. Stuart
No. 05-502
May 22, 2006

The U.S. Supreme Court unanimously ruled that a decision by police officers to enter a home after seeing one person strike another was reasonable.

In *Brigham City v. Stuart*, the Supreme Court determined that the uninvited entry into a home, after seeing a person strike another through a window, was a permissible entry under the "emergency aid doctrine" of the exigent circumstances exception to the search warrant requirement.

The Utah Supreme Court had held that the entry, and subsequent arrest, was unlawful because the officers did not provide any "aid" to the assault victim and because the limited altercation had not escalated into a serious situation that justified a warrantless entry.

The U.S. Supreme Court held that it did not matter "whether the officers entered the kitchen to arrest respondents and gather evidence against them or to assist the injured and prevent further violence."

The officers had responded to a complaint about a late-night party. Looking through a kitchen window, the officers saw adults restraining a juvenile. The juvenile freed his arm and punched one adult in the face. On entering, the officers found evidence of various misdemeanor crimes.

While the actual crime committed might have been relatively minor, the court noted that it was reasonable for the officers to believe "both that the injured adult might need help and that the violence in the kitchen was just beginning. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided."

The seriousness of the actual injury is not unimportant in deciding whether a warrantless entry is permitted; an equally legitimate consideration is the possibility that the violence will continue.

Thus, this case is another decision that suggests officers can, and should, take whatever steps necessary to investigate a claim of domestic abuse and not leave until the officer is reasonably sure the spouse is safe and the situation is not going to be violent.